Telephone Co., 84 Kan. 19, 113 Pac. 386. Likewise recovery has been denied where the servant was injured in the course of rough play or "initiation" of fellow-employees. *Reeve* v. *Northern Pacific R. Co.*, 82 Wash. 268, 144 Pac. 93; *Medlin Milling Co.* v. *Boutwell*, 104 Tex. 87, 133 S. W. 1042. But in these cases the master had no reason to expect the harmful act to happen and no reason to expect the servant to be dangerous. In the former case, to hold the master would be to make him absolutely liable; to hold him in the latter case would be to restrict too narrowly the field of available servants. However, it is not putting too great a burden on an employer to subject him to a duty not to employ a servant known to be personally dangerous. *Missouri, etc. Ry. Co.* v. *Day*, 104 Tex. 237, 136 S. W. 435. See *McNicol's Case*, 215 Mass. 497, 500, 102 N. E. 697, 698.

MORTGAGES — PRIORITIES — PRIORITY OF NOTES SECURED BY THE SAME MORTGAGE. — The holder of four notes, maturing in successive years and secured by one mortgage, assigned the two notes first maturing to the plaintiff and later assigned the other two to the defendant. The plaintiff claims priority in the proceeds of the security. *Held*, that all the notes share *pro rata* in the proceeds. *Georgia Realty Co.* v. *Bank of Covington*, 91 S. E. 267 (Ga.).

The assignment of a note secured by a mortgage gives to the assignee the protection of the mortgage, although the mortgage itself is not assignable. *Romberg* v. *McCormick*, 194 Ill. 205, 210, 62 N. E. 537, 539. But where several notes, secured by the same mortgage, are assigned to different persons, the right of these holders *inter se* to the mortgage security has been much disputed. Some authorities give priority in order of time of the assignments. *Knight* v. *Ray*, 75 Ala. 383; *Gordon* v. *Fitzhugh*, 27 Gratt. (Va.) 835. A more common rule gives priority to the holders of the notes first maturing. *Flower* v. *Elwood*, 66 Ill. 438; *Horn* v. *Bennett*, 135 Ind. 158, 34 N. E. 321. But the weight of authority is in accord with the principal case, making the holders share *pro rata* in the security regardless of the maturity of their notes or the time of assignment. *Perry's Appeal*, 22 Pa. St. 43; *Studebaker* v. *McCurgur*, 20 Neb. 500, 30 N. W. 686; *Orleans Co. Nat. Bank* v. *Moore*, 112 N. Y. 543, 20 N. E. 357. Even under this latter rule, some cases hold that an assignor who retains some of the notes is deferred to his assignee. *Appeal of the Fourth Nat. Bank*, 123 Pa. St. 473, 16 Atl. 779. *Contra*, *Wilcox* v. *Allen*, 36 Mich. 160. But this holding, if justifiable, is due to the fact that the assignor holds the mortgage in trust for his assignee to the extent of the latter's interest. *Snyder* v. *Parmalee*, 80 Vt. 496, 68 Atl. 649. And the same principle might apply with the same result under the earlier assignment or earlier maturity rule. *Parkhurst* v. *Watertown Steam-Engine Co.*, 107 Ind. 594, 8 N. E. 635. The *pro rata* rule seems the most equitable, as the mortgage is intended to cover all the notes equally. This rule is also the most satisfactory in that it takes care of the cases which the earlier assignment and earlier maturity rules do not cover, *viz.*, where the assignments of the notes in one case and the maturity in the other come at the same time.

MUNICIPAL CORPORATIONS — ESTOPPEL — PUBLIC RIGHTS IN PUBLIC LAND BARRED BY EQUITABLE ESTOPPEL OF THE CITY. — A plat filed in 1882, operating as a statutory dedication of a street terminating on a lake, was accepted by the city; but the street was never opened for public use. In 1900 another plat of the same property was accepted from another party by the city officials. This plat indicated the street as ending short of the water's edge. The defendant, acting in good faith, erected coal docks on a part of the street indicated on the first plat but not on the second, and paid city taxes levied on his property. The city now asserts title to the land. *Held*, that the city is estopped. *City of Superior* v. *Northwestern Fuel Co.*, 161 N. W. 9 (Wis.).

While the usual statute of limitations operates against the private interests

of municipal corporations, it is generally held not to apply where public functions are involved. Accordingly city streets, being easements vested in the public, are not subject to the statute. *Simplot* v. *Chicago, etc. Ry. Co.*, 16 Fed. 350, 361; *Heddleston* v. *Hendricks*, 52 Ohio St. 460, 40 N. E. 408. *Cf. Boone Cty.* v. *Burlington, etc. R. Co.*, 139 U. S. 684; *Gregory* v. *Knight*, 50 Mich. 61, 14 N. W. 700. See 2 ELLIOTT, ROADS AND STREETS, 3 ed., § 1188; 17 HARV. L. REV. 273. Sometimes, however, the interest of the individual may be stronger than that of the public. Accordingly, many courts have adopted doctrines of equitable estoppel which, unlike the statute, can take into consideration the merits of the individual case, especially the element of good faith. See DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1194. Some courts have denied the city's claim upon the ground of long-continued non-user by the public and acquiescence in the adverse user. *Schooling* v. *City of Harrisburg*, 42 Ore. 494, 71 Pac. 605. But, though the public may in such cases theoretically know its rights, it does not in fact; and so its inaction is not a representation on which the adverse claimant should rely. Where, however, the public, through its officials, makes affirmative representations, the elements of estoppel may well be present. The difficulty, however, is that the adverse claimant theoretically knows, as one of the public, that the public has title. See 2 ELLIOTT, § 1189. But often he may have no actual notice. It would be sacrificing substance to form, if his technical notice should defeat his right to rely upon the city's positive representations. The argument that, as an indictable trespasser, he has not clean hands falls by the same reasoning. But his claim to equitable relief must be strong. He must have acted *bona fide*, and have made expensive, permanent improvements. The city must have made some particular representations such as taxation of the property, as in the principal case, so that it would be inequitable for it to assert its title. The test of this in each case, it is submitted, should be whether on all the facts, the city's acts reasonably justified an inference that his title was recognized. Then if the city's acts were within its general authority, the public is estopped. *People* v. *Wiebolt*, 233 Ill. 572, 84 N. E. 646; *Weber* v. *Iowa City*, 119 Ia. 633, 93 N. W. 637.

RESTRAINT OF TRADE — CONTRACT NOT TO ENGAGE IN A CERTAIN BUSINESS. — The plaintiff company contracted with five laundry companies in the city of Birmingham, one of which was the defendant, that the latter should announce to their customers that they were acting as collection and delivery agents for the plaintiff company and should collect and deliver soiled goods to the plaintiff and make return deliveries of the cleaned goods. The laundry companies promised in addition to collect only for the plaintiff company and not to go into the dry-cleaning business in the locality. The plaintiff company agreed to pay the laundry companies twenty-five percent of the returns on the dry-cleaning business which they brought in and not to go into the laundry business in the locality. There were other laundry concerns and other dry-cleaning companies operating in this particular commercial community. The defendant company failed to perform and suit was brought to enjoin them from breaking their contract, *Held*, that the injunction be denied. *American Laundry Co.* v. *E. & W. Dry Cleaning Co.*, 74 So. 58.

For a discussion of the principles involved, see NOTES, p. 752.

RULE AGAINST PERPETUITIES — VALIDITY OF ESTATES EXPECTANT UPON ESTATES TOO REMOTE. — A will bequeathed residuary personalty to trustees in trust to pay the interest to three persons for life with cross remainders, and "after the death of the three" to pay over and divide the whole among several other persons. It is provided in N. Y. CONSOL. LAWS, ch. 41, § 11, that an attempt to suspend the absolute ownership of personalty during more than two lives in being is void; and this renders invalid the trust during the